other articles, it seems difficult to say that he is compelled to be a witness or furnish evidence against himself. The effect of the constitutional guaranty against unreasonable searches and seizures has been frequently considered by the courts. The victim of an unlawful search and seizure may, of course, recover damages from the party instituting the search, or from an officer who by exceeding his authority becomes a trespasser. *Commonwealth* v. *Dana* (Mass. 1841) 2 Met. 329; *State* v. *Atkinson*, supra. But, with the exception of the Vermont case of *State* v. *Slamon* (1901) 73 Vt. 212, in which no authorities are cited, and which is squarely contra to other Vermont decisions, *State* v. *Mathers* (1891) 64 Vt. 101, it has never before been held, as in the Iowa case, that in a criminal action evidence unlawfully obtained was for that reason inadmissible. The question first arose in *Commonwealth* v. *Dana*, supra. In deciding it the Massachusetts court said; "When papers are introduced in evidence the court can take no notice how they were obtained, whether lawfully or unlawfully." Subsequent cases have followed and expressly approved this decision until it is well settled in many states that evidence will not be excluded on the showing of the defendant that it was illegally obtained. *Gindrat* v. *People*, supra; *Williams* v. *State*, supra; *Commonwealth* v. *Tibbetts* (1893) 157 Mass. 519; *Bacon* v. *U. S.* (1897) 97 Fed. 35. The text writers adopt this rule without question. 1 Greenleaf on Evidence, § 254, a; 1 Taylor on Evidence, § 922; 1 Bishop, Criminal Procedure, § 246; Chase's Stephen's Digest of Evidence, Art. 2, note 1. The uniform practice of admitting in evidence facts developed by a confession, although the confession itself, because induced by hope or fear, would be inadmissible, would indicate that in passing upon the competency of evidence the manner in which it was obtained is not considered. The fact, too, that evidence procured by "eavesdropping" on a prisoner, or by inducing him to answer "decoy" letters, is always admitted shows that courts are not oversensitive as to the manner in which evidence is procured against one accused of crime. It is difficult to believe that the constitutional provision was intended to afford to an accused person the collateral protection afforded by the Iowa decision. Its object, it would seem, was not to furnish a rule by which evidence could be excluded, but to provide against any attempt by legislation to make lawful any unreasonable search or seizure. *Williams* v. *State*, supra.

---

PART PERFORMANCE AS A BASIS FOR EQUITY JURISDICTION.—The fact of part performance often determines the propriety of granting specific performance of a contract, but is it in itself sufficient ground for equity taking jurisdiction to grant such relief? A recent case gave it this effect. *Raymond Syndicate* v. *Brown* (1903) 124 Fed. 80. The complainant paid $20,000 for a stock of general merchandise. The defendant after delivering about two-thirds refused

to deliver the rest and concealed it so that it could not be replevied. The court conceded that the damages which would be awarded at law were not speculative to a degree that would warrant an assumption of jurisdiction upon that ground, nor was there any imperative necessity that the complainant should have the specific goods in question. In granting specific performance the court invoked what it described as a "favorite jurisdiction" which equity exercises in compelling the completion of what has been partly done, and grounded the right of the complainant to maintain the bill solely on the fact of full performance on his part and partial performance on the part of the defendant. The recognized doctrine of part performance declares that where the contract sought to be enforced is such as equity would ordinarily act upon but objection is entered on some formal or technical ground,—as for vagueness, lack of mutuality, hardship on defendant, or non-compliance with the statute of frauds,—the court will nevertheless decree performance if the contract has been so far executed by the parties as to either eliminate the technical objection, or make insistence upon it work a fraud on the plaintiff for which he would have no redress at law. Thus if A agrees to exploit a patent medicine prepared by B if B will supply him with it at a greater discount than that allowed to anyone else, after A, through his superior facilities has established a market for B's article, the court will restrain B from supplying others with it at an improper discount, although if suit were brought before A had performed his engagement the defence of lack of mutuality might have been open to B. *Dietrichsen* v. *Cabburn* (1846) 2 Phillips, 52. Again, if A and B contract orally for the sale of land and A pays the purchase money and is permitted to enter into possession and make permanent improvements, equity will compel B to convey although the transaction is evidenced by no writing. So where A pays B $1,000 and agrees to make him a suit of clothes in return for B's promise to do work for A of which he is peculiarly capable and not to work for a rival concern, if B leaves and threatens to take service with A's rival A may get specific performance of the negative covenant; and it is no answer for B to say that the court could not compel A to furnish him the suit of clothes, for there has been sufficient performance on A's part to recompense for the restraint and hence the reason upon which the defence of lack of mutuality is based, fails.

It is obvious then that this doctrine does not give equity jurisdiction where the nature of the contract would ordinarily forbid, but may be resorted to only where the remedy at law is inadequate and then only for the purpose of removing some technical objection in what would otherwise be a proper case for equitable relief; nor does there seem to be any other recognized doctrine of equity which justifies the principal case in disregarding the ordinary rule that specific performance will not be granted where there is an adequate remedy at law. A possible departure is the right of the vendor of real estate to collect the contract price in equity upon tendering a conveyance, but in most cases of this class it is prob-

ably true that legal damages would be inadequate or conjectural. Professor Langdell suggests a further exception in the case of unilateral contracts containing a negative covenant of which it is said equity will take jurisdiction simply because the covenant is negative. 1 Harvard Law Rev. 383. But it does not appear that the courts have applied that principle to any case where the legal remedy was clearly adequate. The principal case at all events does not fall within either of these two possible exceptions and advances no argument sufficient to justify its attempt to establish a new one.

---

CITIZENSHIP OF CORPORATION INCORPORATED IN DIFFERENT STATES. —Where the same company is incorporated in several States it frequently becomes necessary to determine the relation between the legal entities thereby createdin order to determine the rights of third parties to sue it in the federal courts. If a railroad incorporated in States A and B, commits a tort in State A, can an injured citizen of State A sue the road in the federal courts of either State alleging it to be a corporation of B? It is well settled that in such a case separate corporations are created in A and B even though the railroad is "spoken of in the laws of the two States as one corporate body." *Ohio & Mississippi R. R.* v. *Wheeler* (1861) 1 Black (U. S.) 286. Each corporation is a citizen of its State for the purposes of federal jurisdiction. *Memphis and Charleston R. R.* v. *Alabama* (1882) 107 U. S. 581. But the question remains open as to how far each of these entities enter into the acts of the railroad in each State. A recent case holds that as to all acts done within State A corporation A alone is acting, that corporation B having no part in them cannot be sued in the federal courts by a citizen of A for a tort there committed. *Goodwin* v. *N. Y., N. H. & H. R. R.* (C. C. Mass 1903) 124 Fed. 358. This holding finds some apparent support in the decision in *Baldwin* v. *Chicago & N.* W. R. R. (C. C. W. D. Mich. 1898) 86 Fed. 167, and in dicta in *Ohio R. R.* v. *Wheeler*, supra. On a similar state of facts, however, the opposite result was reached in *Stephens* v. *St. Louis & S. F. R. R.* (C. C. Ark. 1891) 47 Fed. 530. Further in several cases where a company was incorporated in both A and B the federal courts have taken jurisdiction on the ground of diversity of citizenship where B corporation was suing a citizen of A without regard to whether the acts of the company out of which the right of action arose were done in A or B. *St. Louis R. R.* v. *I. & St. L. R. R.* (C. C. Ind. 1879) 9 Biss. 144; *Louisville Trust Co.* v. *Louisville N. A. & C. R. R.* (C. C. A. Sixth Circ. 1896) 75 Fed. 433; *Nashua & Lowell R. R.* v. *Boston & Lowell R. R.* (1889) 136 U. S. 356.

The rule suggested in the principal case seems artificial. There seems to be nothing in the way that the business of the consolidated company is actually carried on to warrant saying that in State A corporation B is taking no part in the acts of the company and that in State B corporation A is taking no part though the acts may